

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD MITCHELL,
Petitioner,

vs.

BRIAN WILLIAMS, *et al.*,
Respondents.

2:11-cv-01686-JCM-PAL

ORDER

Before the court is petitioner's motion for reconsideration of the court's order denying his motion for the appointment of counsel (ECF #7).

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or

1 discharged, or a prior judgment upon which it is based has been
2 reversed or otherwise vacated, or it is no longer equitable that the
3 judgment should have prospective application; or (6) any other reason
4 justifying relief from the operation of the judgment.

5 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
6 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party
7 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
8 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),
9 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal
10 Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later
11 than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should
12 not be granted, absent highly unusual circumstances, unless the district court is presented with newly
13 discovered evidence, committed clear error, or if there is an intervening change in the controlling law."
14 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253,
15 1255 (9th Cir. 1999).

16 There is no constitutional right to appointed counsel for a federal habeas corpus
17 proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th
18 Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191,
19 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.),
20 cert. denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case
21 are such that denial of counsel would amount to a denial of due process, and where the petitioner is a
22 person of such limited education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d
23 at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970).

24 In the order of November 1, 2011, the court denied petitioner's motion for appointment
25 of counsel because the petition appears sufficiently clear in presenting the issues petitioner wishes to
26 raise (ECF #4). Petitioner has failed to make an adequate showing under either Rule 60(b) or 59(e) that
this court's order denying his motion should be reversed. Counsel is not justified in this action.

1 Accordingly, petitioner's motion for reconsideration of the order denying his motion for appointment
2 of counsel is denied.

3 **IT IS THEREFORE ORDERED** that petitioner's motion for district judge to
4 reconsider order (ECF #7) is **DENIED**.

5
6 Dated, this 3rd day of February, 2012.

7
8 
9 UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26